IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.1855 OF 1998

Smt. Anusayabai Pawalaji Bhalerao
Dockyard Road, Central Railway
Colony, MS/RB/198/8,Mazgaon
Mumbai-10. ..Petitioner

Vs.

1. The Union of India through
the General Manager
Central Railway
Bombay V.T.

2. The Divisional Railway Manager
Central Railway
Bombay, V.T.

3. Shri B.S. Hegde,
Honourable Judicial Member and
Shri M.R. Kolhatkar,
Honourable Administrative Member
constituting the Bench of the
Central Administrative Tribunal,
Gulestan Building No.6
Fort, Mumbai-400 001. ..Respondents

Mr.D.V.Gangal for Petitioner
Mr.Suresh Kumar for Respondent Nos.1 and 2

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 21ST MARCH, 2005.

JUDGMENT (PER F.I.REBELLO,J.)

. The widow of a deceased railway employee has approached this Court to challenge the order passed by the Central Administrative Tribunal dated 5th September, 1997. The Petitioner's husband was in the employment of the railways from 2nd June, 1943 until his death on 2nd October, 1981 whilst he was on sick leave. The Petitioner's husband was

entitled to the benefit of contributory S.R.P.F. and till his death had not opted for Pension Scheme. The Petitioner received the benefits of Provident Fund on the death of her husband. She is also receiving ex-gratia in terms of the rules framed by the Railways. The Original Application came to be filed in 1991 i.e. nearly 10 years after the death of her husband. Her contentions were that the circulars were issued during the period of her husband's illness extending the benefit of pension option to those governed by S.R.P.F. Rules. The circulars about pension scheme further required for personal notice and token of which individual acknowledgment was to be obtained. This was not made personally known to her deceased husband. In these circumstances she contends that she is entitled to get the benefit of family pension as if her husband had opted for pension. The Respondents opposed the said Original Application. It was also contended that the application was totally barred by limitation and therefore not to be considered.

2. We have heard learned Counsel for the Parties. The principal contention as urged on behalf of the Petitioner is as set out in the Original Application, namely that even if it is assumed that an individual notice was required and if the individual notice were given, the

Petitioner's husband considering his illness was in no state of mind to exercise a proper option. It is further submitted that delay in such matters ought not to be considered and for that purpose reliance is placed on the judgment of the Apex Court in **S.K. Mastan Bee Vs. General Manager, South Central Railway and another. 2003, Supreme Court Cases (L & S) 93**.

. On behalf of the Respondents the learned Counsel draws the attention of this Court to the judgment of the Apex Court in **Krishenakumar Vs. Union of India and others (1990) 14 Administrative Tribunals Cases 846.** It was a judgment of a Constitution Bench of the Apex Court. Reliance is also placed on the judgment of a Full Bench of the Tribunal which has taken a view that individual notice is not required as long as there was publication in the matter contemplated by the Rules.

3. In its impugned order Central Administrative Tribunal held that the fact of issuance of individual notice could not be considered, as the Petitioner had approached the Court after a delay of ten years and the Railways keep record of only five years. Then further dealing with service of individual notice, it relied on the judgment of the Full Bench that once the notice was published, no

individual notice was required. It also held that the delay of ten years has not been explained and on that count also held that the Original Application was liable to be dismissed.

4. We do not propose to go into the issue of limitation, considering the matter is of a family pension, but proceed to consider the matter on the other contentions.

. In Krishenakumar (Supra) the Constitution Bench of the Apex Court has noted the various notifications by which the railway employees were given option to opt for pension on various different dates. The notifications up to 23rd July, 1974 were much before the purported sickness of the Petitioner's husband. In other words it is not a case that the deceased husband was unaware of the scheme of opting for pension. The major grievance is based on the circulars which were issued during the time when he was unwell and his subsequent death. There is no challenge made that the circulars were not notified or published. The challenge is that individual notice is not given. A Full Bench of the Tribunal while considering that aspect held that the circulars did not contemplate individual notice and it would suffice if it was published in the manner required. Considering that

we do not find the order of the Tribunal suffers from any error apparent on the face of record on that count. Whether factually notice was served, that is a finding of fact. The Tribunal considering the records has held against the Petitioner herein. It is not possible to hold that the said finding is perverse.

5. This is not a case where terminal benefits were not paid. On the contrary the Petitioner had received the contributory provident fund and other benefits. The judgment in S.K.Mastani Bee (supra) did not deal with the issue of option, that judgment therefore, would be inapplicable to the facts of the present case.

. For all the aforesaid reasons Rule discharged. There shall be no order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)